

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 14, 2021 at 1:30 p.m.

1. **19-21013-E-13** **MELISSA LOVATO**
APN-1 **Thomas Amberg**
SPECIALIZED LOAN SERVICING,
LLC VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-27-21 [33]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 27, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is XXXX.
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Specialized Loan Servicing LLC ("Movant") seeks relief from the automatic stay with respect to Melissa Dawn Lovato's ("Debtor") real property commonly known as 2955 Stable Drive, West Sacramento, California ("Property"). Movant has provided the Declaration of Steven Ross to introduce

evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made twelve (12) post-petition payments, with a total of \$31,451.95 in post-petition payments past due. Declaration, Dckt. 35.

TRUSTEE’S NON-OPPOSITION

Trustee David P. Cusick (“the Chapter 13 Trustee”) filed a Nonopposition on August 16, 2021. Dckt. 43. The Chapter 13 Trustee asserts that the Debtor is current under the pending plan and the Creditor is included as a Class 2A and Class 4 Creditor under the confirmed plan. *Id.* The Trustee has not disbursed any payments towards Debtor’s post-petition, but has disbursed \$733.38, paying the arrears in full. *Id.*

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$402,847.40 (Declaration, Dckt. 35), while the value of the Property is determined to be \$387,000.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

At the October 12, 2021 hearing, counsel for Movant appeared and requested that the court continue the hearing in light of Debtor presenting seeking a loan modification. The hearing is continued as requested by Movant and Debtor.

At the continued December 14, 2021 hearing, **XXXXXXX**

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Trustee reports that Debtor is still delinquent, but agreed to a continuance in light of the medical issue

Trustee also wants to note that the Stipulation filed on July 13, 2017 is inconsistent with the Proof of Claim filed by the Internal Revenue Services (“IRS”). Dckt. 45, Proof of Claim 2-2. Trustee contends that if the numbers are inconsistent and increased the amount being paid to the IRS, then the Plan will run longer than the required 60 months.

Given the age of this case, it being filed in 2017, the Trustee agreed to a continuance to allow Debtor the opportunity to address the default.

November 16, 2021 Hearing

At the hearing, counsel for the Debtor states that Debtor has caught up on some payments, but is still one down. The Parties agreed, in light of the age of the case and efforts being made by Debtor, to a continuance of the hearing.

December 14, 2021 Hearing

At the December 14, 2021 continued hearing, **XXXXXXX**
The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **xxxx**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Final Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 19, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court continued the hearing, opposition and reply briefs were filed, and the final hearing set for December 14, 2021.

The Motion to Annul the Automatic Stay is granted and the stay is annulled effective as of the October 12, 2021 commencement of this case.

U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Movant") seeks relief from the automatic stay with respect to Derek Wolf's ("Debtor") real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California ("Property"). Movant has provided the Declaration of Brian Gaske to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues on October 12, 2021, without any notice of filing of Debtor's fourth consecutive bankruptcy case, Movant conducted its foreclosure sale on the property. Motion, Dckt. 11. At the time of the foreclosure sale, Debtor was due 25 months worth of mortgage payments, with a total of \$25,150.25 in payments past due. Declaration, Dckt. 19. Movant specifies that due to the three prior consecutive bankruptcies prior to this one—all of which were dismissed—the nature of these payments as post or pre petition is not clear.

Trustee's Non-Opposition

Trustee has filed a non-opposition to this motion on October 26, 2021 (Dckt. 21). Trustee

reaffirms that the Debtor has failed to file the following documents:

- a. Chapter 13 Plan
- b. Form 122C-1 Statement of Monthly Income
- c. Schedule A/B – Real and Personal Property
- d. Schedule C – Exempt Property
- e. Schedule D – Secured Creditors
- f. Schedule E/F – Unsecured Claims
- g. Schedule G – Executory Contracts
- h. Schedule H – Codebtors
- i. Schedule I – Current Income
- j. Schedule J – Current Expend.
- k. Statement of Financial Affairs
- l. Summary of Assets and Liabilities

Furthermore, Trustee notes the Creditor’s Motion for Notice of Sale was recorded against said property on September 15, 2021 to schedule a foreclosure sale for October 12, 2021. This was the same time in which the bankruptcy was filed, and the Debtor was still delinquent for 25 months for no less than \$25,150.25 (Dckt. 11).

Review of File

Debtor commenced this case on October 12, 2021. On October 27, 2021, a chapter 13 Plan was filed. Dckt. 24. The Plan provides for monthly payments by Debtor of \$1,500 for sixty (60) months. Plan, Nonstandard Provisions; Dckt. 24 at 7. Additionally, Debtor will pay the Plan off early “if awarded settlement from Social Security.” *Id.*

The only claim provided for in the Plan is Movants, for which Debtor is to pay \$500 a month toward the \$29,254.55 arrearage and \$1,016.32 for the post-petition monthly payment. These two payment total \$1,516.32, which is slightly more than the \$1,500 a month play payment.

However, the Debtor has not accounted for the Chapter 13 Trustee fees paid out of the \$1,500 a month payment. The Trustee’s fee is 10%, so from the \$1,500 payment, there is deducted \$150 for Trustee fees. This results in Debtor’s monthly payment being \$166 short each month.

Debtor does not list any other creditors on Schedules D or E/F. Dckt. 23.

On Schedule I, Debtor states that he has \$1,650 a month in net income from his business, \$358 in CALPERS Death Benefit, and \$750 in rents, for total monthly income of \$2,758. *Id.* At the end of Schedule I Debtor states that a possible increase in income can occur “If I receive claim from Social Security.” He also states, “X Wife + Daughter recently received 5.5 Mil Judgment From RUCCI.”

For expenses, on Schedule J Debtor lists \$1,258 in total expenses, with nothing for self-employment or income taxes. For Expenses, Debtor states having:

- A. Food and housekeeping supplies.....(\$375)
 1. Assuming (\$50) for housekeeping supplies, that leaves (\$325) for food,

which in a 30 day months equals \$3.61 cents per meal.

- B. Debtor has no medical or dental expenses.
- C. Debtor has no home repair or maintenance expenses.

Id.

At the end of Schedule J, in response to whether Debtor expects an increase or decrease in expenses, Debtor states:

If Rushmore will finally be fair and recognize my Mod Package that they have on file.

Schedule A - Value of Property

On Schedule A/B Debtor lists the property that is the subject of the foreclosure sale as having a value of \$310,000. *Id.* On Schedule D Debtor lists Creditor as having a claim of \$145,985. *Id.* In the Motion, Movant states that as of the time of the foreclosure sale, the balance owed was \$163,476.40, and that the buyer at the sale paid \$276,000.00. Motion, ¶¶ 7, 8; Dckt. 11. Presumably there will be almost \$100,000+/- in surplus sales proceeds to be disbursed to Debtor if the stay is annulled.

DISCUSSION

Annulment of Stay

As is well established in the Ninth Circuit, an act taken in violation of the automatic stay is void, not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001); (*In re Schwartz*), 954 F.2d 569, 571 (9th Cir. 1992).

Congress provides for the court to annul the automatic stay so as to render what was void to not be void. However, retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. *Id.* at 1055. Though not dispositive, most courts consider two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.*

In re Fjeldsted, the bankruptcy Appellate Panel for the Ninth Circuit expanded the factors a court may consider when deciding whether to annul the stay: the number of times a debtor has filed a petition; the extent of any prejudice, including to a bona fide purchaser; the debtor's overall good faith; the debtor's compliance with the Code; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the action which occurred. *In re Fjeldsted*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003).

The court reviews the various framework of factors and states how they apply in this Motion as follows:

Nat'l Env'tl. Waste Corp Factors

- (1) Whether the creditor was aware of the bankruptcy petition;

Based on the evidence presented, Movant was not aware of this bankruptcy filing and the existence of the automatic stay. The Movant conducted due diligence by running a PACER search prior to the foreclosure sale, and Movant received no notice of the filing as the day of the sale was also the date of filing. Dckt. 4.

- (2) Whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.

The evidence as it stands shows Movant would be prejudiced if the stay is not annulled. Movant had already conducted a sale in good faith and with a bona-fide, third party purchaser, and Movant conducted the sale with their due diligence to ensure they were not impeding on the Debtor's rights. Debtor failed to file or notify the Movant at any time between the Notice of the Sale on September 15, 2021 and the date of the sale on October 12, 2021. Additionally, Debtor waited until the date of the sale to file this Chapter 13 case. This unreasonable delay in filing and proper notice directly prejudices the creditor by thwarting their good-faith foreclosure sale of the home for almost 2 years of delinquency. To not annul the stay would cause the bona fide purchaser to be harmed as they relied on the assumption the sale was legally binding and proper to purchase the property.

In Re Fjeldsted Factors

Under the *In re Fjeldsted* factors, the Panel looked at refining and providing further guidance to the court as to factors that may apply. Relevant factors here include:

- A. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;

Reiterating the foregoing, Movant was unaware of the bankruptcy. Movant did not receive notice of the bankruptcy on the master address list provided by the Debtor. Additionally, the Bankruptcy was filed on the exact date of the foreclosure sale, giving little time to receive notice even if it was properly sent. Movant has taken no further action since receiving notice, including issuing, executing, delivering, and/or recording the foreclosure deed.

- B. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violating conduct;

Again, the Bankruptcy was filed on the exact date of the foreclosure sale: October 12, 2021. This Motion was filed approximately seven (7) days after the petition was filed and the sale.

- C. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

Movant has taken no further action regarding the sale since receiving notice of the bankruptcy case. Therefore, Movant has not continued to act in violation of the stay.

D. Whether annulment of the stay will cause irreparable injury to the debtor;

There is no showing that annulling the stay will cause irreparable injury to the Debtor. However, at the hearing, Debtor argued that he wants to keep the house, wants Movant to modify the loan, and believes that Movant has not fulfilled its obligations relating to his right to modify the loan.

The court sets this Motion for a briefing schedule, this Motion having been filed using the time shortening Local Bankruptcy Rule 9014-1(f)(2) procedure for which no written opposition is required to be filed before the initial hearing.

The court addressed with the Debtor that in considering the Motion, the court would be considering Debtor's ability to prosecute this case, and that "merely" disputing Movant's claim or asserting that Debtor has a claim to be prosecuted against Movant would not necessarily be grounds to deny the Motion. The court addressed with Debtor his multiple prior failed attempts at prosecuting Chapter 13 cases.

Debtor's Opposition

On November 19, 2021, Debtor filed an opposition to the Motion for Relief. Debtor states they need more time to reconcile their mortgage with U.S. Bank. Additionally, Debtor states they are missing accounting for \$91,600.00 that Keep Your Homes California granted him in 2018. Debtor also disputes penalties and fees of Rushmore and provides exhibits.

Movant's Response

Movant filed a reply in response to Debtor's opposition to the Motion for Relief from Automatic Stay on December 2, 2021. Dckt. 33. Movant states that Debtor fails to:

- a. Address Movant's request to annul the automatic stay; or
- b. Provide any evidence that the Debtor provided any notice to Movant or its agents or representatives of his Bankruptcy filing prior to the foreclosure sale, or any ability to be a successful Debtor in this recent Chapter 13 case.

Additionally, Movant states the Debtor has had the opportunity in his three bankruptcy filings to object to Movant's Proof of Claim or reconcile his mortgage, but has not done so. Also, Debtor asserts that payments were made to Movant in his prior case. In Debtor's Case No. 20-22852, no pre-petition arrears were paid to Movant. Movant also believes the Mortgage Assistance loan received which was sufficient to bring the Debtor's loan current as of February/March 2018, "was in the sum of only \$61,131.14, and NOT the entire \$91,700 as alleged by the Debtor, and that the Debtor's account was credited for that amount on or around March 20, 2018 by U.S. Bank, the then servicer of Debtor's loan. Movant has to date been unable to locate any evidence that the sum of \$91,700 was received from the Mortgage Assistance loan/program."

Movant concludes that Debtor has set forth no substantive Opposition to Movant's request to terminate and/or annul the stay and as such the Motion should be granted as requested. Movant requests (I) *in rem* relief from the automatic stay, as set forth in its Motion, to proceed to conduct another sale of the Property and (ii) a finding that Movant's previously conducted sale of the Property did not violate the

automatic stay.

GRANTING OF MOTION

Debtor has attempted since November 21, 2019, attempted four (including the current case), which consist of one Chapter 7 case, in which Debtor was granted a discharge, two Chapter 13 cases in 2020, with the last one dismissed August 27, 2021 (case 20-22852). Debtor has attempted to prosecute the three Chapter 13 cases in *pro se*.

Debtor commenced the current case on October 12, 2021, which is within one year of case 20-22852 being dismissed on August 27, 2021. Debtor asserts in the Opposition (Dckt. 28) that there is unaccounted for monies not accounted for by Movant,, that he has demanded accountings, and that he disputes the amount stated as owed by Movant.

The Disputes over substantive rights between Debtor and Movant go well beyond the considerations of a motion for relief from the automatic stay.

Relief from stay proceedings are primarily procedural. *Veal v. Am. Home Mortgage Serv., Inc. (In re Veal)*, 450 B.R. 897, 914 (9th Cir. BAP 2011). They typically determine whether the equities justify releasing the moving creditor from the legal effect of the automatic stay. *Id.* Because of the limited scope of inquiry, neither the movant's claim nor its security should be litigated in the relief from stay proceeding. *Id.* (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740-41 (9th Cir. 1985)); *see also Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994) ("We find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect. . . ."). "Given the limited nature of the relief, . . . the expedited hearing schedule § 362(e) provides, and because final adjudication of the parties' rights and liabilities is yet to occur, . . . a party seeking stay relief need only establish that it has a colorable claim" *In re Veal*, 450 B.R. at 914-15 (emphasis added) (citing *United States v. Gould (In re Gould)*, 401 B.R. 415, 425 n.14 (9th Cir. BAP 2009)).

Harms v. Bank of N.Y. Mellon (In re Harms), 603 B.R. 19, 27 (B.A.P. 9th Cir. 2019).

The Chapter 13 Trustee has now filed a Motion to Dismiss this Chapter 13 Case. Dckt. 29. The grounds stated by the Trustee are: (1) Debtor has failed to attend the First Meeting of Creditors; (2) the Chapter 13 Plan has not been served and no motion to confirm a plan has been filed; (3) Debtor has not provided payment advices to verify income; (4) Debtor has not provided copies of required tax returns; and Debtor has not provided the Trustee with the required documents for Debtor's business.

While filing Chapter 13 cases, Debtor has demonstrated that he cannot prosecute, confirm, and perform a Chapter 13 Plan. From the Opposition, Debtor identifies substantive disputes with Movant that require adjudication, and not "merely" a monetary default to be cured. With respect to the substantive dispute, Debtor offers no evidence of his moving forward to diligently prosecute a Chapter 13 case (using the automatic stay in lieu of a preliminary injunction), but instead the record shows using the automatic say to derail the foreclosure process, and such derailing the extent of Debtor's bankruptcy prosecution.

Santander Consumer USA, Inc. has filed Proof of Claim 1-1 asserting a claim which is partially secured, the collateral being a vehicle, a 2006 Honda Ridgeline. This claim states that there is an \$11,444.37 pre-petition arrearage on the claim. POC 1-1, § 9. The Vehicle is not listed on Schedule A/B and Santander (nor is any creditor having a lien against a vehicle) is listed on Schedule D. Dckt. 23. No vehicle payment is shown on Schedule J. *Id.*

In considering this Motion, the court concludes that Movant did not know of the filing of the bankruptcy and did not act in violation thereof. As discussed above, this Bankruptcy Case was filed on the exact date of the foreclosure sale, giving little time to receive notice even if it was properly sent. Movant has taken no further action since receiving notice, including issuing, executing, delivering, and/or recording the foreclosure deed.

The Bankruptcy was filed on the exact date of the foreclosure sale: October 12, 2021. This Motion was filed approximately seven (7) days after the petition was filed and the sale. Movant moved promptly seeking the present relief.

Having learned of the bankruptcy filing, Movant has taken no further action regarding the sale since receiving notice of the bankruptcy case. Therefore, Movant has not continued to act in violation of the stay.

Finally, while annulling the stay will cause the foreclosure sale not to be void, Debtor's opposition asserts having substantive disputes to litigate with Movant. Debtor has had three chances to prosecute Chapter 13 cases, with two being before the filing of the present Chapter 13 case that is not being effectively prosecuted.

While it not surprising, or shocking, for a consumer (or business) to file bankruptcy to stay/derail a pending foreclosure sale, when there are multiple unsuccessful attempts, it demonstrates that such is not reasonably possible. Annuling the stay does not create an irreparable harm for Debtor, as Debtor has demonstrated that the use of Chapter 13 to address the default and related asserted disputes is not feasible.

The Motion is granted and the automatic stay is annulled effective to the October 21, 2021 filing of the Bankruptcy Case as to Movant and the foreclosure on the Property by Movant.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Annul Automatic Stay or in the Alternative In Rem Relief From Automatic Stay filed by U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Annul the Automatic Stay is granted and the automatic stay arising under 11 U.S.C. § 362(a) is annulled

effective to the October 21, 2021 commencement this Bankruptcy Case as it applies to the nonjudicial foreclosure sale conducted by U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust, and its agents and representatives, of the real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California (“Property”), including all acts and filings relating to recording and perfecting the transfer of title of such Property.

This Order annulling the automatic stay is without prejudice to and does not constitute an adjudication of his claims, rights, and disputes concerning the obligation owed to Movant.

4. [21-22663](#)-E-13 **ROBERT MACBRIDE** **CONTINUED MOTION TO DISMISS**
[DPC-3](#) **Pro Se** **CASE**
9-21-21 [\[35\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion is granted and the bankruptcy case is dismissed/converted to one under Chapter 7.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Robert Stuart MacBride (“Debtor”), is delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 6, 2021. Dckt. 39. Debtor states the delinquency will be cured by November 1, 2021. Further, Debtor states that he has been dealing with unexpected time off

from work due to his employer's family members falling ill. Debtor also had a surgery set on October 6, 2021 due to an eye injury. Debtor states that even with these setbacks he believes he can get the Plan current by November 1, 2021.

Debtor states that he is working with family and friends to provide financial assistance, which he states will not be in the form of incurring additional debt.

DISCUSSION

Failed to Commence Plan Payments

Debtor did not commence making plan payments and is \$3,174.05 delinquent in plan payments, which represents a part of one month of the \$3,228.62 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Debtor has had a series of five bankruptcy cases (including the current case) pending in this court since 2016. Those prior cases have all been dismissed.

It appears that Debtor is attempting to save his residential property in which he computes having more than \$200,000 in equity. Unfortunately, it appears that he is slipping further and further into arrears.

At the hearing, Debtor reported that he was still working to prosecute this case. The court addressed with Debtor the need for counsel, especially in light of Debtor's multiple Chapter 13 attempts which have failed, and the ability to pay such counsel through the bankruptcy plan. Debtor reported that he will consider employing counsel.

Nothing further has been filed by Debtor in prosecuting this case.

~~Cause exists to dismiss/convert this case to one under Chapter 7 in light of the identified equity in the Property.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the case is ~~dismissed/converted to one under Chapter 7.~~

THE MONEY SOURCE INC. VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is xxxxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Valaree Jade St. Mary ("Debtor"), is delinquent on plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 6, 2021. Dckt. 177. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$420.00 delinquent in plan payments, which represents multiple months of the \$210.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for the Trustee reported that Debtor is still delinquent, with an electronic payment pending, but it is only for \$210.

Debtor's counsel reported that a royalty check for a couple hundred dollars, but sufficient to

cure the default.

The Trustee agreed to a continuance to allow Debtor to continue to address the default.

December 14, 2021 Continued Hearing

At the continued hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

FINAL RULINGS

6. [19-21951-E-13](#) JASMINE SMITH CONTINUED MOTION TO DISMISS
[DPC-4](#) Scott Shumaker CASE
9-22-21 [\[101\]](#)

Final Ruling: No appearance at the December 14, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Dismiss is denied without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the Debtor, Jasmine Rae Smith (“Debtor”), is delinquent on two months of payments, with another due at the date of filing.

DEBTOR’S RESPONSE

Debtor filed a Response on October 4, 2021. Dckt. 105. Debtor states the delinquency will be cured prior to the hearing date or that the Debtor will file a new plan that is feasible by the date of the hearing.

DISCUSSION

Delinquent

Debtor is \$584.00 delinquent in plan payments, which represents two months of the \$292.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$876.00. Failure to make plan payments is unreasonable delay

that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing the Trustee reported that Debtor is delinquent, with the last payment having been made in July 2021.

The court continues the hearing to afford Debtor the opportunity to confirm the modified plan set for hearing in late November 2021.

Order Confirming Modified Plan

On November 24, 2021, the court granted Debtor's Motion to Confirm the Modified Chapter 13 Plan. As such, the court denies this motion without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the December 14, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 30, 2021. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Relief from the Automatic Stay is dismissed without prejudice.

The Money Source Inc. (“Movant”) seeks relief from the automatic stay with respect to Eric Ali’i Fueva and Rosalia Theresa Inez Fueva’s (“Debtor”) real property commonly known as 2938 Nicolet Lane, Redding, California (“Property”). Movant has provided the Declaration of Ashley Reza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three (3) post-petition payments, with a total of \$6,775.74 in post-petition payments past due. Declaration, Dckt. 63.

CHAPTER 13 TRUSTEE’S RESPONSE

David P. Cusick (“the Chapter 13 Trustee”) filed a Response on April 26, 2021. Dckt. 67. Trustee asserts that Debtor is delinquent one plan payment in the amount of \$3,582.30 and that Movant is included under the confirmed plan as a Class 4 claim. Trustee has not disbursed any payments to Movant.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$332,581.84 (Declaration, Dckt. 63), while the value of the Property is determined to be \$357,000, as stated in Schedules A/B and D filed by Debtor.

As noted by the Trustee in his response, Movant's Secured Claim is provided for the confirmed Chapter 13 Plan as a Class 4 Claim. Class 4 Claim treatment requires that the payments on the claim be made directly by Debtor, and that the automatic stay is terminated for that creditor:

3.11. Bankruptcy stays.

(a) **Upon confirmation** of the plan, the **automatic stay of 11 U.S.C. § 362(a)** and the **co-debtor stay of 11 U.S.C. § 1301 (a)** are . . . ; (2) **modified** to allow the holder of a **Class 4 secured claim to exercise its rights against its collateral** and any nondebtor in the event of a default under applicable law or contract; . . .

Confirmed First Amended Plan, ¶ 3.11; Dckt. 31 (emphasis added).

Though Movant has had the stay modified by confirmation of the Plan, the court appreciates that an order confirming such relief having been granted may need to have that documented when the collateral is real property. Additionally, Movant may desire obtaining such relief to allow for a possible conversion of the case and the Chapter 13 Plan no longer being in effect.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

June 8, 2021 Hearing

The court continued the original hearing date at the request of the parties. As of the court's preparation of this pre-hearing disposition, no other documents have been filed with the court.

Counsel for Movant reported that they are still working on addressing the forbearance and the modification issues, and requested a continuance.

July 20, 2021 Hearing

No supplemental documents have been filed informing or updating the court regarding the forbearance or modification.

At the hearing, counsel for Movant reported that the Parties are working on a loan modification and request that the court continue the hearing past two weeks after September 21, 2021.

October 12, 2021 Hearing

At the hearing, the parties requested a further continuance of the hearing.

December 14, 2021 Hearing

On December 9, 2021, the court entered an order approving the loan modification between Movant and Debtor. Dckt. 98.

The Modification having been consummated, the court dismisses the Motion for Relief without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by The Money Source Inc. (“Movant”) having been presented to the court, the court having granted the Motion to Authorize Modification of Loan, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is dismissed without prejudice.